

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 MIKE FRANK OCHOA,) CASE NO. SA CV 11-886-GAF (PJW)
11)
12 Petitioner,) ORDER TO SHOW CAUSE WHY PETITION
13 v.) SHOULD NOT BE DISMISSED
14 M.S. EVANS,)
15 Respondent.)

16 On June 13, 2011, Petitioner filed a Petition for Writ of Habeas
17 Corpus, seeking to challenge his 2004 state conviction for murder and
18 his life-without-parole sentence. (Petition at 2.) In the Petition,
19 he claims that he was interrogated without being advised of his rights
20 under *Miranda v. Arizona*, 384 U.S. 436 (1966), and that the evidence
21 was insufficient to support his conviction. (Petition at 3-4.) For
22 the following reasons, Petitioner is ordered to show cause why his
23 Petition should not be dismissed because it is time-barred.

24 State prisoners seeking to challenge their state convictions in
25 federal habeas corpus proceedings are subject to a one-year statute of
26 limitations. 28 U.S.C. § 2244(d). Here, it would appear Petitioner's
27 conviction became final in September 2007, 90 days after the
28 California Supreme Court denied his petition for review and the time

1 expired for him to file a petition for writ of certiorari with the
2 United States Supreme Court. See, e.g., *Brambles v. Duncan*, 412 F.3d
3 1066, 1069 (9th Cir. 2005). Therefore, the statute of limitations
4 expired one year later, in September 2008. See *Patterson v. Stewart*,
5 251 F.3d 1243, 1246 (9th Cir. 2001). Petitioner, however, did not
6 file this Petition until June 2011, nearly three years after the
7 deadline.

8 The statute of limitations is tolled during the time "a properly
9 filed application for State post-conviction or other collateral review
10 with respect to the pertinent judgment or claim is pending." 28
11 U.S.C. § 2244(d)(2). In his Petition, however, Petitioner has checked
12 the box indicating that he has not filed any other petitions for
13 relief with respect to this conviction. (Petition at 6.)

14 Additionally, the statute of limitations is subject to equitable
15 tolling if a petitioner can show that he has been pursuing his rights
16 diligently and that some "extraordinary circumstance" prevented him
17 from timely filing the petition. *Holland v. Florida*, 560 U.S. ___, 130
18 S. Ct. 2549, 2562 (2010). Petitioner has not shown entitlement to
19 equitable tolling.

20 IT IS THEREFORE ORDERED that, no later than July 18, 2011,
21 Petitioner shall inform the Court in writing why this case should not
22 be dismissed with prejudice because it is barred by the statute of
23 limitations. Failure to timely file a response will result in a
24 recommendation that this case be dismissed.

25 DATED: June 17, 2011.

26
27 /S/ PATRICK J. WALSH_____
PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE

28 S:\PJW\Cases-State Habeas\OCHOA, M 886\OSC dismiss pet.wpd